

25X1A6C 4395

VIA: Air Approved For Release 2002/06/24 : CIA-RDP60-00442R000100090022-1
(SPECIFY AIR OR SEA POUCH)

DISPATCH NO.

OGC Has Reviewed

~~SECRET~~

CLASSIFICATION

10 NOV 1957

TO : Chief of EE
FROM : Attn: General Counsel
Chief of Mission, [redacted] 25X1A6A
SUBJECT: GENERAL— Administrative

DATE:

SPECIFIC— Section 5 a (3) (A) and [redacted] (Two Years Continuous 25X1
Service Abroad.
25X1A6C

REFERENCE: [redacted] June 16, 1953.

720 1. We do not have a copy here available of the General Counsel's original opinion upon which the above reference was based. We note from the reference that citation is made to the Comptroller General's decision B-933665 dated March 16, 1950. This would appear in the latter part of volume 29. We fail to locate either the number or an appropriate subject matter reference in that volume as of approximately that date. Mention is also made in the reference that this opinion is based upon another opinion in volume 27 but does not set forth the page number. We assume that this opinion is that appearing on page 720 of volume 27 wherein the Comptroller General defines the term "continuous active service" as used in the allowable service provisions of Section 25 of the Postal Service pay statute of July 6, 1945. *unpublished*

2. The writer recalls discussing this opinion and the civil service commission definition of "continuous service" at the time of his temporary duty in Washington. However, a problem has arisen recently in the field, and because of considerations of time, peremptory advice has been given, based upon this previous opinion.

3. A female staff employee had accrued sick leave and annual leave. She experienced difficulty with her pregnancy and subsequently in child birth, which necessitated maternity leave of several months. The maternity leave was charged first to sick leave, then to annual leave in excess of the 22 days necessary for her to return for home leave at the end of her tour. She then applied for and was granted leave without pay during her recuperation period following the child birth. Fortunately in this instance she was able to return to work upon the expiration of the 30 days LWOP. Although her doctor's advice had been to continue her recuperation at least 2 weeks longer, her early return was based upon our advice that she may not thereafter be able to enjoy the benefits of home leave because of a break in her "continuous service." This advice

~~SECRET~~

~~SECRET~~

25X1

was based upon the reference and the opinion which applies the civil service definition stating "that continuous service means an active duty status, but may include no more than one break in service of less than 30 calendar days."

4. We would greatly appreciate your comments with reference to the applicability of this opinion and the foregoing civil service definition to cases of maternity leave. We also note the opinion appearing in 31 Comptroller General Decisions 166, etc., wherein it was held that a person who is an employee attached to the rolls of an agency in a classification act position but who is not rendering active service (e.g., on civilian LWOP or furlough) was considered to still be "in the service of the United States" within the meaning of Public Law 201 enacted October 24, 1951. The Comptroller General there stated, "inasmuch as an individual in a leave without pay or furlough status is still an employee of the United States and carried on the roll of the Agency as such, it must be concluded that he is "in the service of the United States" within the meaning of that term as used in Section 6 (b) supra." It would seem possible under this interpretation that a person whose LWOP exceeds 30 days while on an overseas tour because of exhaustion of sick leave and the necessity of further hospitalization or recuperation, may be deemed to continue in the service of the Government without its constituting a break in the "continuous service abroad." It is, of course, an extension of the two year period required for one tour, but we solicit your comments with reference to the break in service.

25X1A2E

10 November 1954

Distribution:

EE - 3

~~SECRET~~